MISCELLANY.

Capital Punishment.—Whether or not it is better to retain or abolish capital punishment is a question that at one time or another the legislatures of the different states have had to consider. Some of them have retained it, while others have abolished it, and still others have, after abolishing it, again established it. Among the latter states is Iowa, where the death penalty was restored after the "legislative mercy bore its bitter fruit." "Whether the law is wise or not we have nothing to do," says Judge Preston of the Supreme Court of that state in State *v.* Orlander, 186 Northwestern Reporter, 53, wherein the court refused to reduce to life imprisonment a sentence of death for the brutal murder of a father of four children, while committing a robbery.

Stare Decisis.—In the dissenting opinion in State *v.* Falkner, 108 S. E. 756, Chief Justice Clark of the Supreme Court of North Carolina, pays his respects to stare decisis as follows:

"There is no superstitious sanctity attaching to a precedent. It is proper that precedents should not be lightly changed or without sufficient cause. But they should not be adhered to when an opinion has clearly misconstrued a statute or is otherwise palpably erroneous. This court has never held that it was infallible, nor has any other court. We have repeatedly overruled our own decisions, and a large pamphlet was issued some years ago containing a list of such cases, and a similar compilation now would be two or three times as large. The same is true of the United States Supreme Court and all other courts. Men and nations may—

> Rise on stepping-stones
> Of their dead selves to higher things.

"Courts can only maintain their authority by correcting their errors to accord with justice and the advance and progress of each age. They must slough off that which is obsolete and correct whatever is erroneous or contrary to the enlightenment and sense of justice of the age and to the spirit of new legislation. While the courts are properly slow to change decisions unless jutice requires it (as it so loudly does in this case), there are two classes of cases in which there should be close adherence to decisions:

(1) When a decision has become a rule of property. In such case the matter should be left to legislation, which speaks prospectively.

"(2) As to matters of practice, which are founded not on principle, but are more or less arbitrary rules. These should be left till there is a change either in the rules of the court or by legislation."

Speaking Jewish on Street Corner Causes Arrest.—Pursuant to an order of the Police Commissioner of New York City that "all street meetings be given particular attention; no person allowed to sell books, magazines, or collect money at said meetings, and the language spoken must be in English," an arrest was made and the accused charged "with having spoken in the Jewish language upon a street corner." He was compelled to give a bond to appear in the Magistrate's Court, where he appeared the following day and was discharged. He brought an action for false imprisonment, and his complaint was dismissed as not setting forth a cause of action. The judgment was reversed by the Appellate Division of the New York Supreme Court, Second Department, in Goldberg *v.* Kletz, 191 New York Supplement, 452. Judge Putnam, who wrote the opinion, said in his discussion of the case:

"To sustain appellant's arrest, we should have to go to the extreme holding that any one speaking a foreign language publicly was subject to arrest, regardless of his purpose or the character of his words. Arresting one speaking in Jewish at a street corner in a Jewish neighborhood would be an oppressive violation of the rights of Jewish citizens. Had this trial proceeded, and special circumstances been shown, such as a meeting or assemblage with unlawful purpose, or with utterances tending to defy the authorities, very different questions would arise. But, on these pleadings, no justification appears for this interference with the right to speak in a citizen's native tongue.

"There is a suggestion, however, that this order was, in Bacon's words, 'made upon the spur of a particular occasion.' This was because generally the police did not understand the speech of the Jews, and, therefore, to guard against disturbances and rioting, then feared at that critical state of the local housing situation, the police wished to dictate that all talk should be English, and any other speech in public should be prescribed and forbidden. This might explain, but cannot justify, such a police order. In the circumstances shown, it would be beyond the power even of the Legislature."

Strange Oaths.—At Bow street recently, a lady, not content with the usual oath, held up a badge, and said: "I swear this on the badge of the proletariat and the soviet of the people." Quite a number of witnesses like thus to add extra asseverations. In the East End one hears: "By mine old fader," "By mine schilders," and other similar phrases dear to the half-foreign Jew.

The Thames police court, with its cosmopolitan clients, is the home of strange oaths. A Chinaman there once desired to behead a living cock as the solemn ceremony "binding upon his conscience." Others

are content with breaking a saucer. A peculiarly thick and tough variety of crockery seems to be supplied for the purpose. One stolid Celestial, after making several unsuccessful attempts on the wooden rail of the witness box, gave a particularly vicious bang, with the result that the broken pieces flew like sharpnel, while officials and solicitors ducked hastily. Then the Chinaman expressed the customary wish that his soul might have a similar fate to that of the saucer if he did not tell the truth. Perhaps his soul was used to hard knocks, for he apparently found it as difficult to be veracious as to smash the saucer.

Some unusual oaths are the result of ignorance. Since it has been the practice for the witness to read the words of the oath from a printed card, the "whole truth" frequently becomes the "holy truth," or even the "sole truth;" and one witness, instead of swearing "by Almighty God," swore "by all the mighty gods." A constable occasionally holds up the Book, and repeats his own name and number. No doubt he considers that he is one of the mighty gods, as indeed, in that district, he is.

A Mohammedan sometimes insists on washing his hand before he lays it on the Koran, a feeling one can but respect; and we have seen a very pious Rabbi refuse to be sworn upon any Book but his own special copy of the Pentateuch. Such a precaution is not altogether unnecessary, for the justices at certain sessions used to take their oath of office on an old book tied together with tape. One curious person cut the tape, and found it held together an old diary.

It is a sad fact that witnesses, no matter what form of words of ceremony they use, do not always tell the truth, and one is tempted sometimes to think the judicial oath might as well be done away with, and the witness be invited to repeat, instead, the relevant section of the Perjury Act.—*The Justice of the Peace.* (London.)

Dentist Extracts Teeth without Patient's Consent.—A young woman called at the office of a dentist to have her upper teeth examined and to ascertain the cause of a shooting pain in her upper jaw. Being unable to ascertain the cause of the pain, the dentist gave her a card on which was outlined the teeth of both jaws and on which he had drawn a line through six of the upper teeth. Upon the card, beneath the diagram, were the printed words, "Kindly mark teeth to be extracted." Five of the teeth indicated had been crowned. She was then sent to another dentist for an X-ray examination to determine the exact condition that the teeth were in. She kept the card, without reading it, as she supposed it to be merely an introduction to the other dentist, and presented it, about a month later, to the office girl, whereupon she was ushered into the dentist's office. She told him that she had come for an examination, that her dentist could not tell what the trouble was, and had sent her to him to ascertain the trouble. "We'll find out what the trouble is," he responded,

which he proceeded to do by first administering gas. She remonstrated when she realized what was being done, but was held in the chair until she became unconscious and six of her teeth were extracted. A jury assessed her damages at $5,000, which was reduced to $3,500 and costs, pursuant to an order denying a motion for new trial conditioned on such remission. The Supreme Court of Wisconsin in Thorne *v.* Wandell, 186 Northwestern Reporter, 146, reversed the case and ordered a new trial, but provided that judgment might be rendered for $2,000 and costs upon defendant's consent in writing, within 20 days after receiving written notice of the filing of the remittitur in the lower court.